

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.454 OF 2021

Mrs. Jadawatidevi @ Sumitradevi Appellants
Jagatpal Singh & Anr.

Vs.

Mrs. Josephine D'souza & Anr. Respondents

Mr. T.J. Mendon i/by Ms. Jyoti Bajpayee-Pandey for Appellants
Mr. Nilesh V. Bhutekar for Respondent No. 2.

Coram : MADHAV J. JAMDAR, J.
Date : 23RD DECEMBER, 2021

P.C.:

1. Heard Mr. Mendon, learned counsel appearing for the Appellants and Mr. Bhutekar, learned counsel appearing for Respondent No.2.
2. Rule. Rule made returnable forthwith with the consent of parties as very short question is involved in this First Appeal.
3. The First Appeal is filed by the original claimants challenging judgment and award dated 29th October, 2013

passed by the learned Member, Motor Accident Claims Tribunal, Mumbai in Application No. 2370 of 2010.

4. Mr. Mendon submitted that the compensation as determined by the learned Tribunal was of Rs.8,15,000/-, however, only Rs.4,00,000/- was awarded as the original claimants have restricted their claim to Rs.4,00,000/-. He submitted that the said approach of the learned Tribunal is totally contrary to the decisions of the Supreme Court. He relied on the judgment of the Supreme Court, reported in **(2013) 9 Supreme Court Cases 54**, in the matter between Rajesh and Others Vs. Rajbir Singh and Others. He also relied on judgment of the Supreme Court, reported in **2013 ACJ, 2733**, in the matter between Sanobanu Nazirbhai Mirza and Others Vs. Ahmedabad Municipal Transport Service. He also relied on the judgment of this Court dated 23rd September, 2014 passed in First Appeal No. 1800 of 2013. He submitted that as per the settled legal position, it is the duty of the Court to fix the just compensation and therefore Court should award proper compensation irrespective of the claim and if required even in excess of the claim.

5. On the other hand, Mr. Bhutekar, learned counsel appearing for Respondent No.2 submitted that it was the duty of the claimant to make proper claim and as the claim was restricted to Rs.4,00,000/-, it cannot be said that the learned Tribunal has committed any illegality. He, therefore supported the impugned judgment and award.

6. The factual position on record shows that the deceased Jaisingh Jagatpal Singh died in a motor accident on 1st August, 2010 involving Motor Bus bearing No. MH-02-XA 143 and Motor Taxi bearing No. MH-01-X-323. The appellant Nos. 1 and 2 are the parents of deceased Jaysingh, who died at the age of 26 years.

7. After considering the evidence on record, the learned Tribunal in paragraphs 23, 24 and 25 has held that the applicants are entitled to a total compensation of Rs.8,15,000/-, however as the applicants have restricted their claim to Rs.4,00,000/-, they are entitled to a sum of Rs.4,00,000/- only by

way of compensation. The said paragraphs 23, 24 and 25 are reproduced hereinbelow :

“23. Out of this, 1/2 will have to be deducted as being the personal and living expenses of the deceased as he was a bachelor. The net dependency per annum would thus work out to Rs.90,000/- minus Rs.45,000/- = Rs.45,000/-. The total dependency would work out to Rs.45,000/- x 17 = Rs.7,65,000/-. The Applicants are, in addition, entitled to Rs.25,000/- on account of funeral expenses and Rs.25,000/- on account of loss to the estate of the deceased.

24. The Applicants are thus entitled to a total compensation of Rs.8,15,000/-. However, the Applicants have restricted their claim to Rs.4,00,000/-. They did not seek any amendment of the claim Application for enhancing the amount of compensation. In my view, the Applicants would, therefore, be entitled to a sum of Rs.4,00,000/- as claimed by them, in view of the law laid down by the Hon'ble Bombay High Court in Municipal Corporation of Greater Bombay and Anr. Vs. Kisan Gangaram Hire and Others; 1987 ACJ 311 (DB). Again, in the case of Nagappa Vs. Gurudayal Singh; 2003 ACJ 12 (SC), the claim was enhanced by making an amendment to the claim application which has not been done by the Applicants in the instant case. The Applicants are, therefore entitled to a sum of Rs.4,00,000/- by way of compensation as claimed by them.

25. The applicants are, therefore, entitled to a sum of Rs.4,00,000/- by way of compensation. Issue No.3 is therefore answered accordingly.” (Emphasis added).

8. With the above finding, the Tribunal proceeded to pass following order :

- “1. Application is allowed with costs.
2. The Opposite Party and the Insurer shall jointly and severally pay a sum of Rs.4,00,000/- (Rupees Four Lakhs only) inclusive of the NFL, to the Applicants alongwith interest @7.5% p.a. from the date of Application, till realisation.
3. Entire amount with accrued interest shall be paid to each of the Applicant Nos. 1 and 2- Mother and Father of the deceased in equal shares.
4. They are directed to deposit the amount of compensation with accrued interest by A/c payee cheques duly crossed and drawn in the respective names of the Applicants.
5. The office shall deliver the cheques to the Applicants after due verification and on recovery of deficit Court fee, if any.
6. An award shall be drawn up accordingly.”
(Emphasis added).

9. The Supreme Court, in the aforesaid matter of Rajesh and Others (*supra*) has considered the issue “whether the Tribunal is competent to award compensation in excess of what is claimed in the application under Section 166 of the Motor Vehicles Act, 1988”. The Supreme Court in the said case of Rajesh and Others have relied on another judgment of the Supreme Court, reported in **(2003) 2 SCC, 274** in the matter of Nagappa V. Gurudayal Singh, wherein in paragraph 10, the Supreme Court has said that Section 168 of the Motor Vehicles Act, 1918 empowers the Claims Tribunal to “make an award determining the amount of compensation, which appears to it to be just.” Therefore the only requirement for determining the compensation is that it must be ‘just’. There is no other limitation or restriction on its power for awarding just compensation. The Supreme Court therefore held that it is the duty of the Court to fix a just compensation and therefore technicalities should be ignored. In the judgment of Sanobanu Nazirbhai Mirza (*supra*), the Supreme Court has clearly held that in an appropriate case, where from the evidence was brought on record, if Tribunal/Court considers that the claimant is entitled to

get more compensation than claimed, the Tribunal may pass such award. The only embargo is- it should be 'just' compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence.

10. This Court by order dated 23rd September, 2014 passed in First Appeal No. 1800 of 2013 has relied on the aforesaid Supreme Court judgments and held that the Tribunal has a duty, irrespective of the claims made in the application to properly award a just, equitable, fair and reasonable compensation ignoring the claim made in the application for compensation.

11. In view of above legal position, it is clear that the Tribunal has committed an error in holding that although the applicants are entitled to a total compensation of Rs.8,15,000/-, however only Rs.4,00,000/- could be awarded as the applicants have restricted their claim to Rs.4,00,000/-. The Respondents have not challenged the award neither they have challenged the compensation of Rs.8,15,000/- as determined by the Tribunal. In

any case, nothing is shown to point out that the compensation of Rs.8,15,000/- determined by the learned Tribunal is not the just compensation.

12. In view of this, the impugned judgment and award is required to be quashed and set aside/required to be modified to the extent that it only awards Rs.4,00,000/- as compensation, as the compensation is to be awarded of the full amount, which has been arrived at by the learned Tribunal of Rs.8,15,000/-. Therefore, the following order is passed :

ORDER

i) The judgment and award dated 29th October, 2013 passed by learned Member, M.A.C.T., Mumbai in Application No. 2370 of 2010 is quashed and set aside and modified.

ii) Application No. 2370 of 2010 of the applicant is allowed by directing that the Respondents jointly and severally pay a sum of Rs.8,15,000/- inclusive of N.F.L. to the appellants alongwith interest @Rs.7.5% per annum from the date of application, till realisation.

- iii) The entire amount with accrued interest shall be paid to each Appellant Nos. 1 and 2 in equal shares.
- iv) It is clarified that out of the said amount of Rs.8,15,000/-, Respondent No.2 has already deposited amount of Rs.4,00,000/- alongwith interest in the Tribunal and the same has been withdrawn by the Appellant.
- v) Respondent No.2 is directed to deposit before the Motor Accidents Claim Tribunal, Mumbai the balance amount of Rs.4,15,000/- alongwith interest @ Rs.7.5% per annum from the date of application till realisation within a period of eight weeks from today. The appellants are entitled to withdraw the said amount with entire accrued interest.
- vi) Mr. Mendon states that he will pay Court fees on the balance amount of Rs.4,15,000/- in the said Application No. 2370 of 2010 before withdrawal of the amount from the Tribunal.
- vii) First Appeal is allowed in above terms.

(MADHAV J. JAMDAR, J.)